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by the ECF system

Hon. Denise L. Cote, U.S.D.J.

Senator Patrick Moynihan Federal Courthouse  
500 Pearl Street, Courtroom 15B  
New York, New York 10007

Re: *Knopf v. Esposito*, 17 Civ. 5833 (DLC) (SN)

Your Honor:

In reviewing your latest order of today, and the immediately prior filings, it appears that the Court's view is that I should have said that Mr. Sanford, "effectively declined my request that he accept service of the subpoena by failing to respond to that request." I appreciate that I should have been more precise. I will also point out that lawyers (and judges) frequently use the term "decline" as synonymous with a failure to respond to an invitation or offer within a reasonable time, as Mr. Sanford has done here. *See:*

*AOM Group, LLC v. Wachovia Mortg., FSB*, 2010 WL 4715968, \*2 (D. Ariz., Nov. 15, 2010) ("Moreover, we note that plaintiff declined its opportunity to challenge the reasonableness of defendants' attorneys fees by failing to respond.")

*Parker v. Board of County Com's of Shawnee County, Kansas*, 2002 WL 31527763, \*2 (D. Kans., Nov. 5, 2002) (....[B]y failing to respond to the instant Motion, Defendant declined the opportunity to challenge both the grant and the amount of the statutory award.")

*McCall v. Shock*, 2002 WL 31527763, \*2 (E.D. Ark. April 1, 2015) ("Moreover, by failing to respond to the current Motion, Plaintiff has declined to elaborate as to his intentions.")

The search – adv: declined /20 "failing #to respond" – in Westlaw's All Federal + All State database turns up approximately 30 similar examples. While there was no intention to mislead the Court, I do understand the need for greater precision, and accordingly apologize to both the Court and Mr. Sanford.

Thank you for your attention to this matter

Respectfully submitted,  
/s/ Eric W. Berry

Eric W. Berry  
all counsel (by ECF, Mr. Sanford and Ms. Nadel (by email)